NO. 80-1153

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

MAR 31 1981
ALEXANDER L. STEVAS, CLERK

ELVA J. HAUGEN
Petitioner
vs.

GLEN C. TAYLOR, HELEN C. CANNON, C. DONALD BROWN, JAMES C. ANDRUS, JOHN F. ANDERSON, CLARE W. WOODBURY, and DAVID CANTER, INDIVIDUALLY and as member of the BOARD OF SCHOOL TRUSTEES of the CLARK COUNTY SCHOOL DISTRICT;

and KENNY C. GUINN, INDIVIDUALLY and as SUPERINTENDENT of the CLARK COUNTY SCHOOL DISTRICT; RICHARD F. BROWN, Associate Superintendent, Personnel Division; CHARLES SILVESTRE, Assistant Personnel Manager; JOHN T. PAUL, Associate Superintendent; THERON SWAINSTON, Assistant Superintendent, Elementary Education; CECIL R. JACKSON, Principal, E. W. Griffith Elementary School; and KENNETH MARSHALL, Principal, Lois Craig Elementary School, INDIVIDUALLY and as employees of CLARK COUNTY SCHOOL DISTRICT;

DWAINE AVERY, JOSEPHINE C. BYRD, GERALD CONNERS, DON L. ESTES, and JOHN D. HARRINGTON, INDIVIDUALLY and as members of the PROFESSIONAL REVIEW PANEL and employees of the CLARK COUNTY SCHOOL DISTRICT.

Respondents

PETITIONER'S REPLY BRIEF

ELVA J. HAUGEN
1841 N. Decatur
Las Vegas, Nevada 89108
702–648–1116
Proper Person

This Writ of Certiorari is RESPECTFULLY SUBMITTED,

Elva J. Haugen

ELVA J. HAUGEN
1841 N. Decatur
Las Vegas, Nevada
89108

I received a copy of the Writ of Certiorari on December 19, 1980.

Keith R. Edwards 1/64

KEITH EDWARDS
116 S. 4th Street
Las Vegas, Nevada 89101

P24 56456666

RECEIPT FOR CERTIFIED MAIL

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POSTAGE	$ 16 82
CERTIFIED FEE	75
SPECIAL DELIVERY	
RESTRICTED DELIVERY	
SHOW TO WHOM AND DATE DELIVERED	
SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY	
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SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	
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PREFACE–JURISDICTIONAL STATEMENT

Petitioner hand-delivered a copy of the Petition to Respondents on 12-19-80. Respondents and Petitioner agree that the Petitioner's Petition was timely docketed on 12-22-80. Petitioner asked the Clerk's office to return the copies so she could reverse the numerals on pages 2 & 3 and correct the cover. Copies of the corrected version were hand-delivered to Respondents. Respondents mention no hardship placed on them by this correction.

Respondents had 30 days or until 1-16-81 to submit their brief–pursuant to Rule 22.1. Respondents' brief was not filed on or before this date. There is no record of any request or the granting of any request of an extension of time by the Clerk–pursuant to Rule 29.4–to 2-3-81.

On 1-30-81 Respondents untimely requested an extension of 60 days.

On 2-2-81 Petitioner objected to both the Clerk's office by phone and by certified letter addressed to the Court because the Brief was due on 1-16-81 and the request was untimely. The objection should have been delivered to the Court. A copy of this letter was hand-delivered to Respondents on 2-2-81.

Supreme Court Rule 29.4 gives the Clerk authority to grant the first timely requested extension of time but no authority to grant an extension when the request was made after the time for filing of the brief had expired.

The Clerk should not have granted the extension or accepted Respondents' untimely submitted brief on March 14, 1981.

Therefore, Respondents' Brief should not be considered.

Respondents have misrepresented the law, the facts, and misapplied the holdings of the courts in many instances:

QUESTIONS

The lower court erred by appling the wrong statute of limitations to this action. Petitioner wants this Honorable Court to:

1. determine the proper characterization for the RIGHTS protected in this 14th Amendment action; and

2. the applicable statute of limitations in Nevada.

It is a well established principle that those points not argued

are waived:

Respondents have never once argued that the 6 year statute of limitation in Nevada for written contracts is not the applicable statute for this 14th Amendment action. On page 7 of their Brief they agree that Petitioner claims that the six-year statute of limitation, N.R.S. 11.190 (1) (b), which governs actions upon a contract, obligation or liability founded upon an instrument in writing, applies to her action...and that therefore, she is not barred from bringing those claims.

Respondents misrepresented the facts when they omitted that this action was brought pursuant to the 14th Amendment.

Actions based SOLELY on 42 U.S.C. 1983 and/or 1985 present an entirely different case.

Respondents cite no case law wherein the 6 year statute on written CONTRACTS was not applied in a 14th Amendment action.

Respondents agree that Petitioner stands committed to the argument that the six-year statue of limitations for written contract is applicable to her case and yet she does not cite any authorities supportive of that position. This is a misrepresentation of the facts. The law itself is the authority. (Petition 11)

Furthermore, Neither Respondents nor Petitioner found any cases with identical issues; wherein a governmental body breached its contract with a tenured teacher and denied her substantive and procedural due process; where the Petitioner was required by state statute to file a claim with that governing body prior to filing an action; and Respondents not only prevented her from engaging an attorney but also assaulted and threatened her, etc. (Petition pg. 1,2,3*,4,16,24)

These important questions of federal law have not been, but SHOULD BE, SETTLED BY THIS HONORABLE COURT.

2. Since Respondents did not argue or object to the question on Due Process it can be assumed that they agree that Petitioner was denied Due Process by the Board.

Page 2—OPINIONS BELOW

Respondents failed to point out that this case in in federal court because it is the only available court. The Nevada Supreme Court dismissed her action sua sponte and her Petition for a Writ of Certiorari to this Court was denied by this Court

May 31, 1977. (Petition, hereinafter referred to as P–5,25)

Page 2–CONSTITUTIONAL PROVISIONS

Although the heading suggests Constitutional provisions, Respondents failed to address this controlling issue raised by Petitioner–namely: the 14th AMENDMENT. Petitioner's action could have been brought under the 14th Amendment–ALONE. As clearly emphasized in Petitioner's petition (P–17, 18,19) and contrary to Respondents Brief page 13, her fundamental Common Law RIGHTS–life, liberty, property, due process and equal protection are embodied in and guaranteed by the 14th Amendment. 42 U.S.C. ††1983 and 1985 are REMEDIAL statutes applied to make every person who, under color of state law, deprives any citizen of his CONSTITUTIONAL RIGHTS liable to that person. (P–viii, 20)

Page 3–STATEMENT OF THE CASE

Again, Respondents misrepresented the facts by omitting the controlling issue: Plaintiff-petitioner brought this action pursuant to the 14th Amendment because her fundamental Common Law RIGHTS to current and future employment were embodied in and protected by the 14th Amendment.

Respondents omitted the most important point: Petitioner had a written contract with Respondents which they conspired to and succeeded in breaching. As a tenured teacher, having taught more than 7 years, Petitioner had a Statutory RIGHT to continued employment.

If Respondents had not breached their contract with Petitioner, there would be no cause of action.

The 2 most important elements in this case are the CONTRACT and the 14th Amendment. Resondents use the word 'contract' 3 times and the word '14th Amendment' once. Neither Magistrate Ward nor the Court of Appeals use either word.

Again, Respondents misrepresented the facts. Petitioner was removed from the payroll on January 6, 1972, without notice, without a reason, without a hearing and in violation of both state law and constitutional requirements for due process.

Petitioner's employment status between January 6, 1972 and April 20, 1972 is difficult to ascertain. Legally, April 20, 1972, the final day of the hearing,* was the first day that Pet-

itioner could be dismissed. Illegally, Petitioner was dismissed on January 6, 1972, the last day she worked and was paid for working.*

This point is most important because it determines the validity of the subsequent events.

Petitioner contends that all subsequent events are untimely and therefore invalid because: (P–3,4,7,8,9,22,23,24)

1. it was impossible to suspend Petitioner because she was no longer an employee;

2. a suspension 'with pay' is a suspension;

3. a suspension 'without pay' is a termination with possibility for rehire;

4. N.R.S. 391.314 (1) (P–I) granted the superintendent the authority to suspend a teacher without notice, without a hearing, but not 'without pay'. The statute is not specific–it mentions that the teacher shall be reinstated with back pay.

5. N.R.S. 391.314(2) states that the superintendent shall begin proceedings pursuant to N.R.S.391.313.

6. N.R.S. 391.313 required the principal to admonish Petitioner and assist her to correct whatever the cause for dismissal might be for up to 3 months;

7. PETITIONER WAS NEVER EVEN ADMONISHED!

8. it was absolutely impossible to admonish Petitioner who was no longer an employee and assist her in overcoming any alleged problem while Respondents were barring her from her classroom by changing the door locks and thereby barring her from fullfilling her contractual obligation which she was ready, willing and able to meet.

***In Cebular v. Taylor, Las Vegas 1780, Judge Foley decided on February 28, 1974:**

'Plaintiff was clearly prejudiced by the loss of his teaching position and the loss of pay which attended the period of May 14, 1971, the date he was dismissed, and July 22, 1971, the final day of the hearing before the Board and the first day, under Nevada law at that time, that plaintiff could have legally been dismissed.

...this Court concludes that the relevant statutes of Nevada existing at the time of plaintiff's dismissal were unconstitutionally defective as applied to plaintiff...

[Plaintiff's] dismissal is declared to be null and void and it is ordered that he be reinstated...'

9. the 2 untimely 'hearings' fullfilled statutory requirements but lacked substantive and procedural due process; (P–3)

10. Mr. Sanacore, who represented Petitioner at the hearing before the Professional Review Panel was not an attorney but a director of the teachers' union. He refused to hire an attorney or allow Petitioner to hire one;

11. N.R.S. 391.3195(e) requires that the school board render a written decision within 5 day after the hearing; (P–J)

12. Respondents are correct. The untimely 'hearing' before the School Board was April 20, 1972. On April 26, 1972 Mr. Taylor wrote his untimely (1day late) letter which mentioned no date–past, present or future–as the effective date of termination. Legally, Petitioner should have been paid until then. Since she was removed from the payroll January 6, 1972 the effective and illegal date of termination was January 6, 1972 and subsequent events are invalid. (A big 'farce' and the only one not laughing is Petitioner.)

Respondents omitted the law: Petitioner was prohibited by N.R.S. 41.036 and/or 327.325 from commencing an action until after the Notice of Claim had been filed and/or rejected by the School Board. (P–12)

This Honorable Court (Davis v Mills 24 S.Ct. 692) decided:

'A statute of limitations should be construed as a whole–that is, in its entirety...The enactment should be so construed as to make it consistent in all its parts so that proper effect may be given to every section, clause, or part.'

Therefore the claims statue must be applied in this case. The date of accural is January 23, 1973.

This point is incidental if the 6 year statute on contracts is applied and crucial if the 3 year statue is considered.

In certain circumstances the presentation of a claim to a public official or body is in legal effect the institution of an action, or a latter suit relates back to the time of the presentation rather than to the date the suit was brought, so that if the presentation is made in due time the delay of the public official or body on the claim does not affect the claimants right. (Cites omitted.) United States v. Lippitt, 100 U.S. 663; 25 L.Ed. 747; (wherein the War Dept. slept on a claim for 13 years prior to turning it over to the court of claims.)

ARGUMENT

Respondents misrepresent the facts by alleging several defects in Petitioner's petition; however they did not elucidate, enumerate, or present evidence to support this meritless statement.

Petitioner's case fits into every category of reasons why this case should be decided by this Honorable Court. These reasons were specifically set out on pages: P–vi,6,14,15,16,17,19, 20, 22.

I. The table on the right clearly emphasizes the **CONFLICT** not only **BETWEEN THE CIRCUITS** but also the **CONFLICT WITHIN THE CIRCUITS** about the statute of limitations.

A.There are 2 main categories of statutes of limitations which states have enacted to enforce the rights which they created which the lower courts have previously 'borrowed' in 42 U.S. C.1983 actions:

1. 26 states apply: 'liability created by statute';
2. 19 states apply: 'not otherwise provided for';
3. 6 states apply the applicable statute for the RIGHT violated.
4. There is obvioulsy NO UNIFORMITY of categories from which the courts have chosen.

B. There is a wide range in the number of years that the 50 states have provided to limit the enforcement of the RIGHTS which they created , which the lower courts in the 10 circuits have previoulsy 'borrowed' and enforced in 42 U.S.C. 1983 actions:

liability created by statute	not otherwise provided for
years	number of states
20	1	0
15	0	1
10	0	1
6	9	6
5	1	3
4	1	3
3	9	3
2	4	0
1	2	0

II. The table at the right clearly emphasizes the **important question of federal law regarding the statute of limitations, which has**

STATE STATUTE OF LIMITATIONS FOR: LIABILITIES CREATED BY STATUTE–(L) NOT OTHERWISE PROVIDED FOR–(N)

	years
Washington, D.C. 12-301(8)	N–3
Maine 752	N–6
Massachusetts Not Sure	
New Hampshire 508:4	L–6
Puerto Rico	
Rhode Island 9-1-13	N–6
Connecticut 52-581	N-3
New York 214(25)	L–3
Vermont †511T.12-511	N–6
Delaware 10-8106	N–3
New Jersey 2A :14-1	N–6
Pennsylvania Not Sure	
Virgin Islands	
Maryland 5-101	N-3
North Carolina 1-52(2)	L–3
South Carolina 15-3-530(2)	L–6
Virginia Not Sure	
West Virginia 55-2-12	N-2-?
Alabama 6-2-39	L-1
Canal Zone	
Florida 95.11-5(a)	L–3
Georgia 3-704(4360)	L-20
Lousiana 3544	N-10
Mississippi 15-49	N–6
Texas 5529	N–4
Kentucky 413.120	L–5
Ohio 2305.07	L–6
Tennessee Not sure	
Illinois 86-16	N–5
Indiana 34-1-2-3[2-603]	N-15
Wisconsin 893.19(4)	L–6
Michigan 600.5813	N–6

	years
Arkansas 37-213	N–5
Iowa 614.1(80)	N–5
Minnesota 541.05	L–6
Missouri 516.120	L–6
Nebraska 25-206	L–4
North Dakota 28-01-16(2)	L–6
South Dakota 15-2-13(2)	L–6
Alaska 09.10.070(3)	L–2
Arizona 12-541(3)	L–1
California 338(1)	L–3
Idaho 5-218	L–3
Montana 43-2607	L–2
Nevada 11.190-3(a)	L–3
Oregon 12.080	L–6
Washington Not Sure	
Guam	
Hawaii Not sure	
Colorado 13-80-106	L–2
Kansas 60-512(2)	L–3
New Mexico 37-1-4	N–4
Oklahoma 12-95(2)	L–3
Utah 78-12-25	L–4
Wyoming 1-3-115	L–2

Liability created by statute	26
Not otherwise provided for	19
Not sure	6

CONFLICT within the cirucits
CONFLICT between the circuits
NO EQUAL PROTECTION
NO UNIFORMITY
SUPREME COURT NEEDS TO DECIDE

not been, but needs to be settled by this Honorable Court.

A. There is a recognized need for a decision on a uniform statute of limitations and its enforcement:

1. Mr. Justice Brennan set down the opinioin of the Court in Owens v. City of Independence, Mo., 100 S.Ct. 1398, 1407 (1980):

'By its terms, 1983 'creates a species of tort liability that on its face admits no immunities.' Imbler v. Pachtman, 424 U.S. 409, 417; 96 S.Ct. 984, 988; 47 L.Ed.2d 128 (1976). It's language is absolute and unqualified: no mention is made of any privileges, immunities, or defenses that may be asserted. Rather, the act imposes liability upon 'every citizen' who under color of state law or custom, 'subjects, or causes to be subjected, any citizen of the United States...to be deprived of any rights, privileges, or immunities secured by the Constitution and laws.'

2. The dissenting opinion of Justices White, Douglas and Brennan in International U.U.A.A. & A.I.W. v. Hoosier C. Corp, 86 S.Ct. 1107, 1117 (1966) wherein:

'The Court is undoubtedly correct in stating that a uniform limitations period would be desireable...Courts have not always been reluctant to 'create' statutes of limitations, the common-law doctrine of prescription by which judgements are presumed to have been paid after the lapse of 20 years. See Gaines v. Miller, 111 S. 395, 399; 4 S.Ct. 426, 427; 28 L.Ed. 466; (Cites omitted.)

3. Resondents cite Berry v. Arthur, 474 F. Supp. 427 (D.S.D. (1979) wherein the Court held: (page 13)

'Federal courts have applied a wide range of limitations provisions to civil rights actions. The lack of uniformity is due to the variety in state statutes of limitations provisions,...and to different legal approaches in finding the most appropriate state statute.'

4. The 1968 Columbia Law Review article, page 773 submitted: '...Surely, at least one of the purposes behind section 1983 is to penalize those who violate the Constitution and thereby deter future violation. Whatever course the court chooses, its choice will be an improvement over the anarachy of the present law.'

5. The 'common sense' approach of a layman, Petitioner:

B. There are 2 controlling questions which apply to both the 14th Amendment and the federal statute 42 U.S.C. 1983:

1. Whether there is a Constitutional provision or a federal statute which authorizes a statute of limitations that may be applied to limit the enforcement of Petitioner's Constitutional RIGHTS, or whether the Supreme Court could or should 'create' one as suggested above.

2. Whether there is a Constitutional provision or federal statute which authorizes the lower courts to 'borrow' and enforce a state (Nevada) law to void a Constitutional right.

a. The language of the 14th Amendment is clear and absolute: **No State shall make or enforce any law which will abridge** the priviliges or immunities of citizens...

(1) Abridge means to shorten; therefore:

(2) This Clause strictly forbids the state (Nevada) leislators from enacting a statute limiting the Constitutionally guaranteed RIGHTS.

(3) This Clause further forbids the courts from enforcing a statute limiting citizen's Constitutional Rights.

(4) The 14th Amendment does not confer authority on the lower courts to 'borrow' a law which Nevada has enacted in defiance of the 14th Amendment—and apply it for the purpose of voiding the RIGHTS which the 14th Amendment was ratified to protect.

(a) The precedent of 'borrowing' Nevada's statute of limitations should be abolished—like slavery.

(b) This Court should enforce the 14th Amendment and render a decision stating that those 14th Amendment RIGHTS are unconditionally guaranteed and no statute of limitations will be enforced to abridge (shorten) them.

b. The 14th Amendment guarantees Petitioner equal protection of the laws.

(1) No statute of limitations provides equal protection of laws to both Petitioner and the State.

(a) A State law serves to quickly amend, repeal or limit the 14th Amendment, the authority, which can ONLY be changed by another Amendment.

(b) Nevada waits to see if this Court will hold their laws not applicable to the 14th Amendment.

c. This argument is supported by 42 U.S.C. 1983 and this Court's decision in Owens, supra. **'or defenses that may be asserted....the act imposes liability...'**

(1) The statute of limitations is a defense; therefore it may not be asserted.

d. If this court feels that it should 'create' a statute of limitations Georgia's 20 years on liability created by statute; Indiana's 20 years on Contracts and 20 years on prescription provide a uniform number of years in 3 different areas. Nevada's law should equal Georgia's.

Every issue herein presented was presented in the lower courts. Respondents agreed by not arguing the points.

Respondents 42 U.S.C. 1983 cases emphasize these points:

1. Courts are divided on the statute of limitations—Glascoe v. Howell (R-18); Smith v. Cremins (R-11); Berry v. Arthur (R-13).

2. No federal statute of limitations—Nevels (R–10).

3. Majority of their cases based SOLELY on 1983–Mason.

4. Wide range of reasons for 42 U.S.C. 1983 actions–See Owens, supra; & 1968 Columbia Law Review page 764.

5. No Claim filed—Jackson v. Hayakawa (R–14).

6. Discovery marks time action accrues—Cox.

7. Difference in available categories—Hartford, Shouse.

8. Difference in years for same category—Berry, Strung.

9. Liability created by statute not always available—Henig.

10. Liability created by statute not always applied—Carmicle, Madison.

11. Longer rather than shorter statute applied—Mason.

12. A State statute limiting action based on limitless federal statute—Chambers.

NUMEROUS ARGUMENTS SUPPORT TIMELINESS OF THIS ACTION

1. The 14th Amendment strictly forbids State (Nevada) from enacting or enforcing any law that will shorten the priviliges...

2. 42 U.S.C. 1983 mentions no defenses (statute of limitations which may be asserted by State (Respondents).

3. This Court decided that the **statute of limitations should be construed as a whole:**

a. Petitioner's Notice of Claim was required by Nevada law.

b. Petitioner could maintain action on January 23, 1975.

c. Petitioner filed October 7, 1975—within 3 years.

4. Discovery dates time of accrual or June 1, 1975.

5. Petitioner's action filed within 6 years on written contract.

6. This Court decided the **Longer statute should be applied.**

7. Attorney interference by Respondents bars their asserting the statute of limitations as a defense.

8. Governemnt and private **employees RIGHTS equal.**

9. Nevada's 3 year statute does not equal Georgia's 20 years.

Petitioner agrees with majority of circuit judges: **This Court needs to settle the issue of the statute of limitations.** However, ***her primary concern is that her action not be dismissed at the pleadings stage by applying the wrong statute of limitations.***

This Reply Brief is RESPECTFULLY SUBMITTED.

Elva J. Haugen

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Las Vegas, Nevada
89108

I received a copy of Petitioner's Reply Brief on Marcy 30, 1981.

KEITH EDWARDS
116 S. 4th Street
Las Vegas, Nevada
89101